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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,728	12/29/2001	Joseph Zeck	DCI-19C	4116
21833	7590	10/20/2003	EXAMINER	
BOULDER PATENT SERVICE INC 1021 GAPTER ROAD BOULDER, CO 803032924			FULLER, ERIC B	
			ART UNIT	PAPER NUMBER
			1762	

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)
	10/040,728	ZECK ET AL.
	Examiner	Art Unit
	Eric B Fuller	1762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached Office Action.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached Office Action.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-38.

Claim(s) withdrawn from consideration: _____.

8. The proposed drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's amendment has not been entered because it would raise the new issue of "arranging an electronics package in the portable locator for monitoring different predetermined operator actuations" (claim 1) in combination with the limitations of "the marking arrangement is configured for foot actuation" (claim 6). This combination of limitations was absent from the currently pending claims and therefore would require further search and consideration.

Response to Arguments

All arguments presented by the attorney are moot, as they pertain to amendments that have not been entered.

Additionally, it is noted that the examiner indicated in the interview summary that the claims appear to be allowable as amended. However, this was under the interpretation of "an electronics package" as being interpreted as meaning a single package, having a monitoring step, that determines the different actuations and initiates the corresponding function. It was the idea that this single package, capable of differentiating between actuations, would read over the prior art, which teaches having an electronics package dedicated to the marking function and a second electronics package dedicated to the locating function. Further consideration, particularly in view of claim 6 and figure 2, shows that the applicant's "an electronic package" may read

having two parts, one dedicated to each function. Therefore, it is no longer believed that the claims, as proposed to be amended, necessarily put the case in condition for allowance.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric B Fuller whose telephone number is (703) 308-6544. The examiner can normally be reached on Mondays through Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck, can be reached at (703) 308-2333. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



EBF



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